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No. 391

In the Supreme Court of the United States

OCTOBER TERM, 1961

CHARLES E. LEGGETT AND JOHN HENRY ELEVELD,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (R. 418–423; Pet. App. 33–40) is reported at 292 F. 2d 423.

JURISDICTION

The judgment of the court of appeals was entered on July 25, 1961 (R. 417, 418; Pet. App. 33). A petition for rehearing was denied on August 15, 1961 (R. 431). The petition for a writ of certiorari was filed on September 8, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioners' conviction for the interstate transporta-

tion of goods of a value in excess of $5,000 acquired through fraud.

2. Whether evidence was improperly admitted on the issue of intent.

STATUTE INVOLVED

18 U.S.C. 2314 provides in pertinent part:

> Whoever transports in interstate * * * commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, conve ted or taken by fraud; * * *
>
> * * * * *
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.
>
> * * * * *

STATEMENT

A two-count indictment returned in the District Court for the Eastern District of Michigan charged petitioners with having on two occasions transported or having caused the transportation in interstate commerce from Detroit, Michigan, to Fort Dodge, Iowa, a number of drums of polyester resin of a value in excess of $5,000, with knowledge that the drums were obtained through theft or fraud, in violation of 18 U.S.C. 2314, *supra* (R. 2). Following a trial by jury, petitioners were convicted as charged. Petitioner Leggett was sentenced to a general term of imprisonment for a year and a half, to be served consecutively to a prison sentence which Leggett was then serving, and ordered to pay court costs in the amount of $1,760 (R. 404). Petitioner Eleveld was sentenced to a general term of imprisonment for a year and ordered to

pay court costs of $440 (R. 405). On appeal, the conviction was unanimously affirmed (R. 417, 418–423; Pet. App. 33–40).

The evidence may be summarized as follows:

1. In 1957, one Edmund Juzwik was vice-president and a director of Glass Craft Boats, Inc., of Fort Dodge, Iowa. He had prior business dealings with petitioner Leggett through a firm called National Procurement (R. 250, 262–263). In September of that year, Leggett asked Juzwik whether he could use some surplus merchandise in his "manufacturing operations" (R. 252–253). Leggett said that he knew a man by the name of "Dunwood," who was a representative of a company in Switzerland which, as a result of its purchasing operations, occasionally had surplus material to dispose of (R. 252–253, 263–265). Juzwik said that he would purchase supplies if they were the "right kind of material" at the "right price" (R. 253).

In October 1957, a "Mr. Wilson" of National Procurement telephoned the Reichhold Chemicals Company of Ferndale, Michigan, and requested Reichhold to submit price quotations on polyester resin to one "Colonel Stewart" of National Procurement in New York (R. 10–11). Reichhold did as requested. On October 15, 1957, National Procurement ordered 106 drums of polyester resin at a total cost of $16,112 (R. 11–13, 83). On October 23, pursuant to arrangements made by petitioner Eleveld, the resin was picked up at Reichhold and stored in a warehouse in Dearborn, Michigan (R. 16–18, 127–129, 131–133, 152, 166, 177–179). Eleveld paid the truck driver in cash

for his services, and the unloading and storage charges were paid for in cash by someone for National Procurement (R. 141, 153–154). After the resin was stored, Leggett and two other men tested some of it (R. 167–173).

In a letter of October 24 signed by "J. Eleveld," National Procurement advised the warehouse that title to the resin had been transferred to "Joseph Dunwood and/or Acme Limited, Zurich, Switzerland" (R. 146–147, 150). Shortly thereafter, the warehouse was instructed by letter from "Joseph Dunwood, Acme Limited Representative" to release the resin to the Sansone Brothers Cartage Company of Detroit (R. 148, 155). In late October, the Sansone Brothers trucking firm, pursuant to arrangements made by Leggett, picked up the resin at the warehouse and delivered it to a warehouse in Detroit where it was unloaded and stored (R. 154–155, 160, 183–185, 192–194, 196, 210, 228–229). Leggett and two other men paid the truck drivers in cash for their services (R. 184–185, 197).

Leggett subsequently sold the warehouse receipts for the resin to Juzwik for about $13,000 (R. 251–254, 258–261, 265–267). Juzwik then sent the warehouse receipts to a trucking firm, and informed the Detroit warehouse that he had purchased the warehouse receipts for the resin (R. 210–211, 213, 248, 269).

Shortly thereafter, petitioners entered the warehouse in Detroit, where Eleveld introduced himself as "Joseph Dunwood" (R. 231–233, 239–240; see R. 215, 217, 220). Eleveld paid the handling and storage charges in cash, and signed papers in the name

"Joseph Dunwood" (R. 221, 231–233, 246–247). Petitioners arranged to have the drums tallied in lots of ten. The "way bills" indicated the consignor as "Acme Limited—A. E. Juswik," and the consignee as Glass Craft Boats of Fort Dodge, Iowa (R. 199–200, 204–205, 208, 227–228). A short time later, the 106 drums of resin were picked up at the warehouse by a trucking firm, and were subsequently shipped to Juzwik at Fort Dodge, Iowa, by another trucking firm (R. 204–205, 208, 210, 226–227, 242–243, 254, 273).

2. In April 1958, a "Colonel Stewart" of National Procurement telephoned the credit manager of Reichhold Chemicals and said that the original invoice for the 106 drums of resin which had been bought in October 1957 had been "lost," and that Reichhold should send duplicate invoices which he would insure would be processed for "immediate payment" (R. 73–74). In late April, without having made payment on the resin obtained in October 1957, National Procurement ordered 114 additional drums of polyester resin from Reichhold at a total price of $18,240 (R. 19–24, 83). Reichhold's credit manager left instructions with the plant that the second order was not to be shipped until payment was received on the first order. Shortly thereafter, a man who identified himself as "Col. Eleveld" telephoned the credit manager and said that National Procurement had paid $32,000 "by mistake," and that Reichhold should apply the "overpayment" to the second order (R. 84–85, 116–117). As a result of this telephone call, the credit department permitted the April order to be shipped (R. 117). On May 2, 1958, a trucking firm picked up

114 drums of resin at the Reichhold plant in Ferndale, Michigan, and brought it to a warehouse in Detroit where it was unloaded and stored for National Procurement (R. 25–27, 90, 104, 278–283, 284–286, 293–294). Leggett paid the storage charges (R. 289–290, 292–293).

In a letter signed by "C. O. Stewart," National Procurement subsequently advised the warehouse that the resin should be released to "Joseph Dunwood and/or Acme Limited, Zurich, Switzerland" (R. 288–289; see R. 294). A few days later, the 114 drums of resin were picked up by another trucking firm and transported to another Detroit warehouse where it was unloaded and stored. Eleveld paid the trucking firm in cash for its services and, in making storage arrangements, introduced himself to a warehouse-representative as "Joseph Dunwood" (R. 296–298, 301–302, 320–321). In the meantime, Leggett sold the warehouse receipts to Juzwik for $14,453.70, and a check in that amount was made payable to "Joseph Dunwood" and given to Leggett (R. 258–259). The warehouse was subsequently informed by letter from "Joseph Dunwood" that the warehouse receipts were being turned over to Mr. Juzwik, and that the warehouse was authorized to release the resin to Juzwik (R. 305–308, 315). Eleveld and Juzwik paid the storage charges (R. 310). A short time later, a trucking firm picked up the resin, which was subsequently delivered to Glass Craft Boats in Fort Dodge, Iowa, by another trucking company (R. 206–208, 273, 304, 309, 312–313).

Reichhold Chemicals never received any payments on the two shipments of resin, despite efforts by

it and a collection agency to collect payment, and National Procurement's account, totaling $34,352 due and owing, was written off as "bad debts" (R. 71–73, 82–85, 91–95, 98, 112–113; see R. 29).

3. National Procurement used the telephone number and mailing address of a New York City telephone answering service in 1957 and 1958, and mail sent to National Procurement at that address was forwarded to "Charles E. Leggett" at a Chicago address (R. 39–44, 408–409). During the same period, National Procurement had a telephone answering and mail service account with a Washington, D.C., answering firm (R. 45–46, 48–49, 410–412). Reichhold's credit manager telephoned the Washington number and left messages for "Colonel Stewart" to call him. The credit manager subsequently received telephone calls from "Colonel Stewart" and "Colonel Eleveld" (R. 73–74).

National Procurement's purchase orders sent to Reichhold included authorization numbers, requisition numbers, warrant numbers, account numbers, terms, shipping points and routing (R. 12, 23, 37). The first purchase order stated that inspection was waived, that the entire shipment was to be made available "for truck pick-up starting at 0900 hours 23 October 1957," that the loading would be supervised by its personnel, and was signed by a Colonel over the designation "Procurement Director" (R. 10–14). Reichhold's credit manager testified that Reichhold had supplied products including polyester resin to the government in the past and that he treated the purchase orders of National Procure-

ment as government orders when he was informed by the shipping manager, who possessed the orders, that they were "identical" to government orders (R. 74–75, 81–82, 106–108, 118, 408, 413). He said that an added reason for his believing that the purchase orders were government orders was because the people from National Procurement with whom he dealt identified themselves as colonels (R. 118–119). He testified that Reichhold did not investigate the credit standing of National Procurement because he believed that Reichhold was dealing with the United States Army (R. 118–119). The shipping manager of Reichhold testified that National Procurement's purchase orders were similar to government orders and that the shipping department treated them as government orders (R. 408).

Beginning in late 1957, Glass Craft Boats, Inc. purchased fiber glass cloth from Leggett (R. 251, 254, 274–275). Juzwik testified that he believed that a shipment of fiber glass came from a warehouse in Tennessee (R. 254). The sales supervisor of the fiber glass division of a firm in Nashville, Tennessee, testified that he had been asked for price quotations by a person who identified himself as Lieutenant Colonel Eleveld; representing National Procurement. The person calling said he was with an emergency purchasing group and that the materials were needed in the missile program. The sales supervisor was subsequently contacted by another person who identified himself as "Colonel Stewart." The supervisor believed that the company was doing business with the government (R. 347–352). The credit standing of

National Procurement was not investigated for this reason. Two shipments of fiber glass were picked up (R. 349–350).

The sales manager for the fiber glass division of a New Hampshire Company testified that in 1958 he received telephone calls from a person who identified himself as Lieutenant Colonel Eleveld of National Procurement and that materials were later ordered by National Procurement. The company believed that it was doing business with the government (R. 323–324, 326, 328–330, 332, 334–336, 340, 342). The materials furnished to National Procurement were replevied from a New Hampshire warehouse after the company discovered that it was not dealing with the government (R. 335–336, 343–344).

ARGUMENT

1. Petitioners contend (Pet. 19–30) that the evidence was insufficient to prove three basic elements of the offense with which they were charged. This contention, however, was properly rejected by the court below and presents no issue warranting further review by this Court.

a. Petitioners seek to insulate themselves from the interstate shipments by pointing out that "Dunwood" purchased the resin from National Procurement, had it stored, and subsequently sold it to Juzwik who arranged for its interstate shipment. Their argument overlooks the clear evidence that Leggett himself sold the warehouse receipts to Juzwik; that Leggett received over $23,000 in checks on behalf of "Dunwood"

and over $3,000 in cash from Juzwik in payment for the resin; that Leggett inquired in Iowa of Juzwik's supply needs in his "manufacturing operations" prior to the placing by National Procurement of its first order for resin with Reichhold; that petitioners arranged for the storage of the resin after its "sale" to "Dunwood"; that petitioners paid the truck drivers for hauling the resin and paid some of the storage charges after the resin was "sold" to Dunwood; that Eleveld, in the company of Leggett, represented himself as "Joseph Dunwood" to warehouse personnel immediately prior to the first interstate shipment; and that, prior to that interstate shipment, petitioners requested that the warehouse have the drums tallied in groups of ten for shipment. Whether or not a "Joseph Dunwood" existed and whether or not National Procurement sold the resin to him, the fact remains that petitioners knew that the resin was destined for an interstate shipment and actively caused and facilitated this shipment. In short, petitioners were actively interested in the resin from the time it was obtained from Reichhold to the time of its shipment from Detroit to Fort Dodge, Iowa. In answer to special questions, the jury found that petitioners knew that the resin was destined for an interstate shipment (R. 414).[1]

[1] Petitioners' claim (Pet. 17, 20, 25) that the decision below conflicts with *United States* v. *Gordon*, 253 F. 2d 177 (C.A. 7), is misplaced. In that case, where the defendant helped load the stolen property into an automobile, there was no direct evidence that the defendant knew that the property had been stolen or that it was being transported in interstate commerce. *Id.* at 181. Moreover, there was nothing in the record to indicate that the

b. The argument that the proof did not show the value of the resin is rebutted by the record. Reichhold sold each shipment to National Procurement for over $16,000, and Leggett sold the warehouse receipts for the first shipment for about $13,000 and the warehouse receipts for the second shipment for about $14,000 (R. 83, 251–254, 258–261, 265–267).

c. The record shows beyond any doubt that petitioners, through National Procurement, obtained the resin from Reichhold through fraud. Business men do not ordinarily sell materials for which there is a market at substantially less than the purchase price if they intend to pay the purchase price. See *Blumenthal* v. *United States,* 332 U.S. 539, 550, where this Court noted that it was reasonable inference that in a time of shortages an owner of liquor was not selling at cost or slightly above. Not only were no payments ever received by Reichhold on National Procurement's outstanding indebtedness, but National Procurement induced Reichhold, through a telephone call from a "Col. Eleveld," to ship the second order of resin by representing that a $32,000 check was mailed to Reichhold, and that the "overpayment" should be applied to the second order. There was also evidence that National Procurement sought to rep-

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defendant had any further interest in the property or the proceeds from it after it was loaded. *Id.* at 181–182. Here, in contrast, the evidence showed that petitioners themselves perpetrated the fraud and therefore had knowledge of it; they were actively engaged in transporting the resin in interstate commerce; and they had a financial interest in its shipment. In any event, both the *Gordon* and instant cases concern the evaluation of different evidence in two different records. Thus, there is no possible conflict on any general question of law.

resent itself to Reichhold and others as a purchasing group for the federal government, *i.e.*, the character of its purchase orders and the many uses of the military rank of "Colonel" in dealing with Reichhold.

2. The evidence that National Procurement sought to represent itself as a government purchasing agency was clearly admissible. As we have seen, it tended to show that National Procurement and thus petitioners obtained the resin from Reichhold with the intent to defraud. It was not necessary for the government to introduce legitimate government purchase orders into evidence for comparison purposes. There was testimony from a person who had dealt with the government that National Procurement's purchase orders were identical with government purchase orders. The fact that Reichhold, and other parties who had dealt with National Procurement, believed National Procurement's purchase orders to be government orders was in itself some evidence of their fraudulent character. As was pointed out in a recent mail fraud case, "[t]he tendency of the form to mislead is shown by testimony that it did mislead." *Linden* v. *United States*, 254 F. 2d 560, 566 (C.A. 4).

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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